



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 8, 2005

Ms. Mary Winston
Public Information Officer
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2005-01980

Dear Ms. Winston:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 219915.

The Texas Savings and Loan Department (the "department") received a request for information relating to complaints and enforcement actions involving eighteen named individuals or entities, including orders to cease and desist, take affirmative action, or pay an administrative penalty. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.112 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 156.301 of the Finance Code. Chapter 156 of the Finance Code is also known as the Mortgage Broker License Act. *See* Fin. Code § 156.001. Section 156.301 provides in part:

¹You inform us that no responsive orders exist. We note that the Act does not require the department to release information that did not exist when it received this request or to create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

(a) The [savings and loan] commissioner may conduct inspections of a person licensed under this chapter as the commissioner determines necessary to determine whether the person is complying with this chapter and applicable rules. The inspections may include inspection of the books, records, documents, operations, and facilities of the person and access to any documents required under rules adopted under this chapter. The commissioner may share evidence of criminal activity gathered during an inspection or investigation with any state or federal law enforcement agency.

(b) On the signed written complaint of a person, the commissioner shall investigate the actions and records of a person licensed under this chapter if the complaint, or the complaint and documentary or other evidence presented in connection with the complaint, provides reasonable cause. The commissioner, before commencing an investigation, shall notify a mortgage broker or loan officer in writing of the complaint and that the commissioner intends to investigate the matter.

(c) For reasonable cause, the commissioner at any time may investigate a person licensed under this chapter to determine whether the person is complying with this chapter and applicable rules.

...

(f) Information obtained by the commissioner during an inspection or an investigation is confidential unless disclosure of the information is permitted or required by other law.

Id. § 156.301(a)-(c), (f). We understand you to contend that the submitted information is confidential in its entirety under section 156.301(f). You do not inform us, and we are not otherwise aware, of any law that would permit or require the department to release any of this information. Therefore, based on your arguments and our review of the information at issue, we find that most of the submitted information is confidential under section 156.301(f) of the Finance Code.

We note, however, that the submitted information includes complaints and documents that appear to have been submitted to the department as attachments to complaints. Because an investigation of a complaint under section 156.301 would not begin until after the receipt of a complaint, we do not believe that complaints or attachments to complaints constitute “information obtained by the commissioner during an inspection or an investigation[.]” *Id.* § 156.301(b); *see also id.* § 156.301(f) (investigation may be based on complaint and documentary or other evidence presented in connection with complaint). Consequently, we conclude that complaints received by the department may not be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 156.301 of the Finance Code. We have marked those types of documents. Likewise, to the extent that the

submitted documents were provided to the department as attachments to complaints, we also conclude that any such attachments to complaints may not be withheld under section 552.101 in conjunction with section 156.301. With the exception of complaints and attachments to complaints, we agree that the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code.

To the extent that section 156.301 is not applicable to the submitted documents, we address your claim under section 552.112 of the Government Code. This section excepts from disclosure "information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both." Gov't Code § 552.112(a). You assert that section 552.112 also is generally applicable to the submitted documents. We find, however, that the submitted documents that are not confidential under section 156.301 of the Finance Code neither are contained in nor relate to an examination, operating, or condition report prepared by or for the department. Therefore, the department may not withhold any such documents under section 552.112 of the Government Code. *See also* Open Records Decision No. 392 at 3-4 (1983) (statutory predecessor to Gov't Code § 552.112 not applicable to records of company's transactions with persons filing complaints with Office of Consumer Credit Commissioner).

We note, however, that certain information contained in the documents that are not confidential under section 156.301 of the Finance Code must be withheld from the requestor on other grounds. Section 552.101 of the Government Code also incorporates the common-law right to privacy. Information must be withheld from the public under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since determined that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has held to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

Common-law privacy also encompasses certain types of personal financial information. This office has determined that financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a

governmental body. *See* Open Records Decision Nos. 600 at 9-12 (1992) (identifying public and private portions of state employees' personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

We have marked personal financial and other private information that is protected by common-law privacy. To the extent that these types of information appear in documents that are not confidential under section 156.301 of the Finance Code, the department must withhold these types of information under section 552.101 of the Government Code in conjunction with common-law privacy.

We also note that one of the complaints contains a social security number. The 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state under any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii)(I); Open Records Decision No. 622 at 2-4 (1994). We have no basis for concluding that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of the federal law. We caution you, however, that the Act imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Therefore, prior to releasing any social security number information, the department should ensure that no such information was obtained or is maintained by the department under any provision of law enacted on or after October 1, 1990.

Section 552.136 of the Government Code is applicable to certain account numbers and other access devices.² This section provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

²Unlike other exceptions to disclosure, this office will raise section 552.136 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked the types of information that are confidential under this exception. To the extent that these types of information appear in documents that are not confidential under section 156.301 of the Finance Code, they must be withheld under section 552.136.

Section 552.137 is applicable to certain e-mail addresses.³ This section provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

³This office also will raise section 552.137 on behalf of a governmental body, as it is a mandatory exception and may not be waived. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001).

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under section 552.137. Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees.

We have marked the types of e-mail addresses that are confidential under section 552.137. To the extent that such e-mail addresses appear in documents that are not confidential under section 156.301 of the Finance Code, they must be withheld under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure.

Lastly, we note that some of the information that the department may be required to release to the requestor appears to be protected by copyright law. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) with the exception of complaints received by the department and attachments to complaints, the department must withhold the submitted documents under section 552.101 of the Government Code in conjunction with section 156.301(f) of the Finance Code. To the extent that the submitted documents are not protected from disclosure under section 552.101 on that basis: (a) personal financial and other private information must be withheld under section 552.101 in conjunction with common-law privacy; (2) the department may be required to withhold a social security number under section 552.101 in conjunction with section 405(c)(2)(C)(viii)(I); (3) account number information must be withheld under section 552.136; and (4) personal e-mail addresses must be withheld under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. The rest of the submitted information must be released. In releasing

any information that is protected by copyright, the department must comply with copyright law.

You also ask this office to issue a previous determination that would permit the department to withhold information under section 552.101 of the Government Code in conjunction with section 156.301 of the Finance Code without the necessity of again requesting an attorney general decision with respect to the public availability of such information. We decline to issue such a decision at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001) (previous determinations). This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

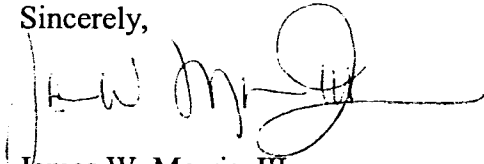
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'JW Morris III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 219915

Enc: Submitted documents

c: Ms. Teresa W. Robinson
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(w/o enclosures)